

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

United Federation of Churches, LLC (dba
“The Satanic Temple”),

Plaintiff,

v.

David Alan Johnson (aka “ADJ”), Leah
Fishbaugh, Mickey Meeham, and Nathan
Sullivan,

Defendants.

No. 2:20-cv-00509-RAJ

PLAINTIFF’S RESPONSE IN
OPPOSITION TO DEFENDANTS’
MOTION TO DISMISS

Comes now Plaintiff United Federation of Churches, LLC (dba “The Satanic Temple”) (abbreviated as “TST”) with a response in opposition to Defendants’ Rule 12(b)(6) Motion to Dismiss (Dkt. 11).

I. Introduction

TST filed a complaint because Defendants stole TST's Facebook pages to create a competitor organization and to publish defamatory statements about TST to TST's social media followers. Defendants move to dismiss on all counts.

The Court should deny the motion to dismiss the Computer Fraud and Abuse Act (CFAA) count because TST revoked Defendants' permission to use the social media accounts prior to the misappropriation and, "technological gamesmanship . . . to aid in access will not excuse liability."

The Court should deny the motion to dismiss the Cyberpiracy count because TST pleaded that Defendants misappropriated the Facebook page, in part, with the goal of forming a competitor organization.

The Court should deny the motion to dismiss the tortious interference claim because the Facebook page is a service which provides TST an economic benefit. For Defendants to divert the value of that service away from TST is, necessarily, an interruption of the business relationship between Facebook and TST. To Defendants' point that TST can build a new Facebook page, TST responds, "Build your own."

The Court should deny the motion to dismiss the Consumer Protection Act (CPA) claim because Defendants intend to offer competitor services on the back of the recognition arising from TST's reputation and goodwill and the trade-secret membership listings, membership agreements, internal policies and procedures, other governance materials, and access to a hard-won social media following.

Last, the Court should deny the motion to dismiss the defamation claim. First, because the First Amendment's bar against court intrusion into ecclesiastical affairs has nothing to do with

1 this case. This Court is not being involved to adjudicate a schism, it is being involved to remedy
2 the theft of a website and the publication of false and defamatory accusations.

3 The Court should also deny the motion to dismiss the defamation claim as to the remaining
4 Defendants because of civil conspiracy liability. Johnson may have been the individual who hit
5 “send” on the false and defamatory statements, but the statements were part of a group effort to
6 steal TST’s Facebook page and defame TST. It is too late for the co-conspirators to abandon
7 Johnson. They are all in it together.
8

9 II. Argument

10 A. Standards for Motion to Dismiss.

11 “At this stage in the proceedings, [the court must] accept as true all allegations in [the
12 plaintiff’s] complaint and treat as false those allegations in the answer that contradict [the
13 plaintiff’s] allegations.” *Elvig v. Calvin Presbyterian Church*, 375 F.3d 951, 955 (9th Cir. 2004).
14 “A complaint should not be dismissed unless it appears beyond doubt that the plaintiff can prove
15 no set of facts in support of his claim which would entitle him to relief.” *Gilligan v. Jamco Dev.*
16 *Corp.*, 108 F.3d 246, 248 (9th Cir. 1997) (quotations and citations omitted).
17

18 “The Rule 8 standard contains ‘a powerful presumption against rejecting pleadings for
19 failure to state a claim.’ ” *Id.* at 249 (citation omitted); *see also Hall v. City of Santa Barbara*,
20 833 F.2d 1270, 1274 (9th Cir. 1986) (“It is axiomatic that ‘[t]he motion to dismiss for failure to
21 state a claim is viewed with disfavor and is rarely granted.’ ”) (quoting 5 Charles Alan Wright &
22 Arthur R. Miller, *Federal Practice & Procedure* § 1357, at 598 (1969)). Defendants’ Motion to
23 Dismiss does not even approach these exacting standards.
24

25 First, to be entitled to the presumption of truth, allegations in a complaint or
26 counterclaim may not simply recite the elements of a cause of action, but must
contain sufficient allegations of underlying facts to give fair notice and to enable

1 the opposing party to defend itself effectively. Second, the factual allegations that
 2 are taken as true must plausibly suggest an entitlement to relief, such that it is not
 3 unfair to require the opposing party to be subjected to the expense of discovery
 and continued litigation.

4 *AE ex rel. Hernandez v. County of Tulare*, 666 F.3d 631, 637 (9th Cir. 2012) (quoting *Starr v.*
 5 *Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011)).

6 Where the Court dismisses for failure to state a claim, “leave to amend should be granted
 7 unless the court determines that the allegation of other facts consistent with the challenged
 8 pleading could not possibly cure the deficiency.” *Schreiber Distrib. Co. v. Serv-Well Furniture*
 9 *Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986).

10
 11 **B. The CFAA prohibits accessing a website in excess of authority. Defendants**
 12 **exceeded their authority, as formed by the Code of Conduct, to access the**
Facebook page.

13 Defendants’ motion to dismiss the CFAA claim is rooted in the premise that the
 14 misappropriation of a website is never a CFAA violation if the Defendants had the ability to
 15 access the website. *See* Dkt. 11 at pp. 6-7. The flaw in this premise is in disregarding the language
 16 of the statute. *See* 18 USC § 1030(a)(2)(C) (barring the intentional access of a computer when it
 17 “exceeds authorized access” and thereby obtains “information from any protected computer.”)
 18

19 As explained in the Complaint, a website is a “protected computer.” Dkt 1 (Complaint) at ¶
 20 59; *see United States v. Drew*, 259 F.R.D. 449, 457-58 (C.D. Cal 2009); *see also, e.g., Craigslist*
 21 *Inc. v. 3Taps Inc.*, 942 F. Supp. 2d 962, 968 (N.D. Cal. 2013), *Ticketmaster L.L.C. v. Prestige*
 22 *Entm’t W., Inc.*, 315 F. Supp. 3d 1147 (C.D. Cal. 2018), *United States v. Nosal*, 676 F.3d 854
 23 (9th Cir. 2012) (hereinafter “*Nosal I*”).

24 Defendants cite *Nosal I* without discussing it. This landmark case deserves more. In *Nosal*
 25 *I*, a former employee (Nosal) encouraged current employees to access confidential information
 26

1 on the employer’s computer system and to transfer that information to Nosal. 676 F.3d at 856.
 2 Nosal wanted to use that information to form a competitor. *See id.* at 864 (Silverman, J.,
 3 dissenting). The Ninth Circuit found that this does not violate the CFAA because the language
 4 “exceeds authorized access” is limited to violations of restrictions on access to information, and
 5 not restrictions on its use. *Craigslist Inc. v. 3Taps Inc.*, 942 F. Supp. 2d 962, 968 (N.D. Cal. 2013)
 6 (emphasis in original).
 7

8 But *Nosal I* does not end the analysis. Later cases have distinguished *Nosal I* by pointing to
 9 explicit limits on authorization. For example, in *Craigslist*, above, a cease and desist letter
 10 denying authorization to use the website “for any purposes” constituted “unauthorized access”
 11 under the statute. *Craigslist*, 942 F. Supp 2d at 970. *See also United States v. Nosal*, 844 F.3d
 12 1024, 1028 (9th Cir. 2016) (hereinafter “*Nosal II*”) (“Unequivocal revocation of computer access
 13 closes both the front door and the back door;”) *LVRC Holdings LLC v. Brekka*, 581 F.3d 1127
 14 (9th Cir. 2009) (“[A] person uses a computer ‘without authorization’ under [the CFAA] . . . when
 15 the employer has rescinded permission to access the computer and the defendant uses the
 16 computer anyway.”)
 17

18 Similarly, in *Ticketmaster*, a cease and desist letter which emphasized Ticketmaster’s demand
 19 for an end user conglomerate adhere to its terms of use. *See* 315 F. Supp. 3d at 1172. The
 20 *Ticketmaster* court rejected the defendant’s argument that CFAA liability did not attach where
 21 the cease and desist letter did not revoke “*all*” authorization to use the website because “the
 22 CFAA penalizes both access without authorization *and* situations where a defendant possesses
 23 some authorization, but acts [in] excess of that authorization.” *Id.* (emphasis in original).
 24

25 As Defendants will be quick to point out, in *Craigslist* the titular plaintiff also implemented
 26 efforts to block the defendant’s access, *id.* at 970, but this was not necessary to perfect a CFAA

1 claim. *See id.* (citing *Weingand v. Harland Fin. Sols., Inc.*, No. C-11-3109 EMC, 2012 U.S. Dist.
 2 LEXIS 84844, 2012 WL 2327660, at *3 (N.D. Cal. June 19, 2012) (concluding that the CFAA
 3 applies to “access[ing] information without permission” regardless of a lack of technological
 4 barriers;”) *see also Domain Name Comm’n Ltd. v. DomainTools, LLC*, No. C18-0874RSL, 2020
 5 U.S. Dist. LEXIS 53303, at *5 (W.D. Wash. Mar. 26, 2020) (“Once permission has been revoked,
 6 technological gamesmanship . . . to aid in access will not excuse liability.”)
 7

8 Similarly, here, TST never afforded Johnson free reign to post whatever he felt like. *See*
 9 Complaint at ¶¶ 28-34. As alleged at ¶¶ 33-34, TST had previously and explicitly enforced the
 10 limits of Johnson’s authorization to access the Facebook page. As explained there, “The ensuing
 11 deletion [of material previously posted in “excess of authorization”] and reiteration of the
 12 expectation that Johnson adhere to the Code of Conduct as a condition of continued social media
 13 **access** would serve as foreshadowing for the misappropriation of the Allies page.” Complaint at
 14 ¶ 34 (emphasis added).
 15

16 It is compelling if not dispositive that the whole fiasco was prompted by Defendants’ offense
 17 taken for being kicked out “without notice.” *See* Dkt. 1-5 (Johnson manifesto). There, Johnson
 18 gloats that he took over the Facebook page before his administrative privileges were revoked.
 19

20 The emphasis on limits to Johnson’s “access” to the social media account is critical because
 21 it distinguishes this case from *Nosal I* and likens it to *Craigslist* and *Ticketmaster*. Under both
 22 *Craigslist* and *Ticketmaster*, a defendant’s permission to access the information was predicated
 23 on contract terms. Identically, Defendants’ permission to access the administrative privileges of
 24 the Facebook account were predicated on the Code of Conduct. When the parties had a falling
 25 out, Defendants’ authority to access the social media account was revoked. Although TST had
 26

1 not yet removed Defendants' *ability* to access the administrative privileges of the account,
2 Defendants were not authorized to boot all the other administrative users.

3 Defendants' abuse of those administrative privileges, which exceeded the grant of authority
4 as defined by the Code of Conduct, and their refusal to return the website to TST despite repeated
5 demand, brings this case wholly out of the "little known" or "innocuous" technical violations the
6 *Nosal I* Court was concerned with. *See* 676 F.3d at 860-863 ("[M]inor dalliances would become
7 federal crimes. While it's unlikely that you'll be prosecuted for watching Reason.TV on your
8 work computer [presumably in violation of your employer's computer-use policy], you *could*
9 be.")

11 Defendants are not charged with watching Reason.TV. They are charged with stealing TST's
12 websites for the specific purpose of harming TST, refusing to return them despite repeated
13 demands, and then targeting defamatory statements directly at TST's hard-won audience with
14 TST's own platform.

16 Nor do Defendants make a convincing argument in taking issue with whether Facebook
17 intervened to correct Defendants' misappropriation. Defendants have subordinate rights to TST
18 to the Facebook page. The question of authorization is directed at whether TST authorized the
19 access to the administrative features, not whether Facebook authorized it. This argument is a red
20 herring and merits no further response.

22 Similarly, TST need not specifically plead each individual Defendant's bad faith conduct,
23 because the acts of one in furtherance of the conspiracy are the acts of all. A civil conspiracy
24 claim operates to extend, beyond the active wrongdoer, liability in tort to actors who have merely
25 assisted, encouraged, or planned the wrongdoer's acts. *Flowers v. Carville*, 266 F. Supp. 2d 1245,
26 1249 (D. Nev. 2003) (citing 16 Am. Jur. 2d Conspiracy § 57 (1998)). Defendants acted in

1 association and in concert to deprive TST of its website and post defamatory content. *See, e.g.*,
 2 Complaint at ¶¶ 14, 15, 16 (other defendants are associates of and aided and abetted Johnson), ¶
 3 35 (defendants entered into an unlawful agreement), ¶ 37 (Meeham acted in conjunction with
 4 the other defendants). It is too late for the remaining defendants to abandon Johnson.

5 To support its argument that the CFAA claim should be dismissed, Defendants present a false
 6 dichotomy between “misappropriating” and “exceeding authorized use.” This fails to
 7 accommodate the plain language of the statute which expressly bars exceeding authorized use of
 8 a protected computer to obtain information. As alleged at ¶ 28-34, TST explicitly informed
 9 Defendants that the Code of Conduct forms the contours of their social media access and
 10 explicitly reminded Johnson of the expectation that he adhere to those terms as a condition of his
 11 access. After Defendants stole the website, TST demanded its return to no avail.

12 Defendants cannot hide behind the mere technicality that TST had not yet removed their
 13 ability to abuse their administrative powers to avoid liability. The Court should deny Defendants’
 14 motion to dismiss because “the CFAA applies to restrictions on access regardless of whether the
 15 restrictions are contractual or technological.” *Craigslist*, 942 F.Supp.2d at 969.

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 18 **C. Cyberpiracy turns on a bad faith intent to profit from the mark, which is guided**
 19 **by a nine-factor statutory test. A review of the nine factors overwhelmingly**
 20 **shows Defendants had a bad faith intent to profit from the mark.**

21 Defendants next take issue with whether TST adequately pleaded that they had a bad faith
 22 intent to profit from the mark. Dkt. 11 at pp. 12-13. Defendants’ concern is allayed by a routine
 23 application of the applicable nine factor totality of the circumstances test. 15 USC §
 24 1125(d)(1)(B)(i).

25 **1. TST owns the trademark rights of the domain name.**
 26

1 The first factor asks whether the plaintiff has trademark rights in the domain name. It does.
 2 See Dkt. 1-1 (wordmark registration for “The Satanic Temple”). The domain in question is
 3 facebook.com/**TheSatanicTemple**Washington. Emphasis added. Defendants do not own it.
 4 This factor tends to suggest Defendants had a bad faith intent to profit from the mark.

5 **2. “TheSatanicTempleWashington” is the name commonly used to identify TST’s**
 6 **Washington Chapter, not Defendant’s nascent competitor organization.**

7 The second factor asks the extent to which the domain name consists of the legal name of the
 8 person or a name that is otherwise commonly used to identify that person. Plaintiff’s trade name
 9 is “The Satanic Temple.” Defendants’ trade name is “Satanic Washington State.” The website
 10 in question was for TST’s Washington chapter, not Defendant’s nascent competitor organization.
 11 This factor tends to suggest Defendants had a bad faith intent to profit from the mark.

12 **3. Prior to the wrongful conduct, TST (not Defendants) used the website in connection**
 13 **with the bona fide offering of religious services.**

14 The third factor inquires into “the person’s prior use, if any, of the domain name in connection
 15 with the bona fide offering of any goods or services.” The website in question was used by TST
 16 to advertise TST’s prior offering of religious services. Prior to usurping the website, Defendants
 17 had never previously used it to offer competing services. This factor tends to suggest Defendants
 18 had a bad faith intent to profit from the mark.

19 **4. Defendants have no bona fide noncommercial or fair use of the mark.**

20 The fourth factor asks about “the person’s bona fide noncommercial or fair use of the mark
 21 in a site accessible under the domain name.” Defendants have no bona fide noncommercial or
 22 fair use of the mark. Quite the opposite, Defendants are using TST’s mark for the express purpose
 23 of diverting TST’s good will to themselves. See, e.g., Complaint at ¶ 77. This is the very essence
 24 of a Lanham Act violation.
 25
 26

5. Defendants intend to divert consumers from TST with the intent to tarnish or disparage the mark by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the site.

The fifth factor asks about:

the person's intent to divert consumers from the mark owner's online location to a site accessible under the domain name that could harm the goodwill represented by the mark, either for commercial gain **or with the intent to tarnish or disparage the mark**, by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the site

15 USC § 1125(d)(1)(B)(i)(V) (emphasis added). This factor is the crux of Defendants' motion. They argue there is no intent for commercial gain, but disregard that it is sufficient that they have the intent to disparage the mark. *See, e.g.*, Complaint at ¶ 77.

Further, Defendants posted a link to their own Twitter page (*see* Dkt. 1-6 at p. 17), which creates a likelihood of confusion as to source. *See also* Complaint at ¶ 62 ("I'm **confused** as to why a TST Facebook page is being used to attack TST") (emphasis added). Again, this factor lends toward a finding that Defendants had a bad faith intent to profit off the mark.

6. Defendants intended to hold the website hostage without using it to offer any goods or services.

The sixth factor inquires into whether Defendants offered to transfer the domain name for financial gain to the mark owner without having used it in the bona fide offering of any goods or services. A plain reading of Johnson's manifesto shows Defendants renamed the Facebook page "Archived Temple Chapter" and relishes in the idea of TST trying to get in touch with him. Dkt 1-5.

These two facts show Defendants intended to hold the website hostage. And, taking their motion to dismiss at face value, they had no intention of offering for sale any assets or services. Dkt. 11 at p. 15. These two facts support a finding that Defendants intended to ransom the

1 website back to TST without a bona fide intent to sell goods or services. This factor lends toward
 2 a finding that Defendants had a bad faith intent to profit off the mark.

3 **7. Defendants intentionally failed to maintain accurate contact information or provided**
 4 **false contact information to obtain the website and have a pattern of such conduct.**

5 The seventh factor inquires into:

6 the person's provision of material and misleading false contact
 7 information when applying for the registration of the domain
 8 name, the person's intentional failure to maintain accurate contact
 9 information, or the person's prior conduct indicating a pattern of
 10 such conduct.

11 15 USC § 1125(d)(1)(B)(i)(VII). First, Defendants have demonstrated a pattern of providing
 12 material and misleading false contact information by attempting to steal TST's Gmail account
 13 through changing the account recovery credentials. Complaint at ¶ 42. Additionally, Defendants
 14 needed to change the account recovery credentials to the Facebook page. This factor lends
 15 toward a finding that Defendants had a bad faith intent to profit off the mark.

16 **8. Defendants stole other websites with TST's marks.**

17 The eighth factor looks into whether Defendants have a history of stealing or diluting marks.
 18 They did. *See* Complaint at ¶ 36 (stealing the Allies page); ¶ 38 (briefly stealing the Twitter
 19 account); and ¶ 42 (attempting to steal the Gmail account). This factor also lends toward a finding
 20 that Defendants had a bad faith intent to profit off the mark.

21 **9. TST's mark is distinctive.**

22 The last factor asks about "the extent to which the mark . . . is or is not distinctive and
 23 famous." 15 USC § 1125(d)(1)(B)(i)(IX). Defendants touch on TST's fame in their motion to
 24 dismiss. *See* Dkt. 11 at fn. 6 ("Defendants in no way concede that The Satanic Temple should be
 25 considered a private plaintiff for purposes of its defamation claim.")
 26

1 In some circles, TST is well-known. *See, e.g.*, The Guardian, “Devil’s advocate: are Satanists
 2 now the good guys in the fight against the evangelical right?” Aug. 15, 2019 (available at
 3 <https://perma.cc/XRW3-LQHE>) (Last visited June 21, 2020); “Hail Satan?” Penny Lane
 4 (Magnolia Films 2019). The mark is sufficiently distinct and famous that this factor should lend
 5 in favor of a finding that Defendants intended to profit from it.
 6

7 As explained in the Complaint at ¶¶ 74-75, the Facebook page provides TST with an
 8 economic benefit through a positive feedback loop between awareness and donations.
 9 Defendants’ misappropriation of the site is a misappropriation of that economic benefit with the
 10 purpose of diverting it from TST to Defendants’ organization. This is the essence of a Lanham
 11 Act violation.
 12

13 After applying the nine-factor totality of the circumstances test, the Court should find that
 14 Defendants’ theft of TST’s Facebook pages was done in a bad faith attempt to profit off the mark.
 15 At minimum, Plaintiff has plead sufficient facts to support this allegation. The Court should
 16 deny Defendants’ motion to dismiss.

17 **D. Defendants are liable for tortious interference because they stole the websites**
 18 **which harmed TST’s ability to communicate with its audience.**

19 Defendants next contest whether TST has pleaded a tortious interference case because
 20 “[t]here is nothing preventing The Satanic Temple from continuing to use Facebook products.”
 21 Dkt. 11 at p. 14. Defendants’ argument relies on two faulty premises.

22 First, Facebook does not offer “widgets,” as analogized in the motion to dismiss. To draw a
 23 more apt analogy, Facebook offers sculpting services. The organization and Facebook get
 24 together to begin sculpting a work of art. That artwork is economically beneficial to the
 25 organization. Then, five years later, a disgruntled former employee of the organization convinces
 26

1 Facebook to give the employee exclusive access to the now-ornate sculpture, defaces it, and
 2 falsely represents the defaced sculpture as the employee's own work. At all times, the disgruntled
 3 former employee intended to usurp the economic benefit of that artwork both to harm TST and
 4 to benefit the employee.

5 While true that the organization "could" get together with Facebook to start a new artwork,
 6 Facebook no longer offers to the organization the sculpting services *for that sculpture*.
 7 Defendants' conduct interrupts the relationship between the service (hosting and publishing the
 8 Facebook pages) between Facebook and TST. Defendants' argument simply lacks merit.

9 Defendants' argument is that there is no interference with the business relationship because
 10 TST can create a new Facebook page. TST responds, "make your own Facebook page." The
 11 Court should deny the motion to dismiss because Defendants stole the economically beneficial
 12 services for the specific purpose of harming TST.
 13
 14

15 **E. Commerce results from the exchange of money. Defendants may not have**
 16 **intended to solicit donations for themselves, but their efforts to reduce the**
 17 **donations TST receives from Washington residents fall within the ambit of the**
 18 **CPA.**

19 Defendants next take issue with the fact that their wrongful conduct did not include any sale
 20 of assets or services. Dkt. 11 at p. 15. The relevant definition is:

21 "Trade and commerce shall **include** the sale of assets or services,
 22 and any **commerce** directly or indirectly affecting the people of
 23 the state of Washington."

24 RCW 19.86.010 (emphasis added). "Commerce" is, simply, the exchange of currency. See
 25 The Law Dictionary, "Commerce" (available at <https://thelawdictionary.org/commerce/>) (Last
 26 visited June 21, 2020).

Commerce is implicated by the stolen Facebook pages because they have an economic value
 to TST. Complaint at ¶ 75. As explained there, the Facebook pages provide increased awareness,

1 which tends to provide “increased membership and donations which create a positive feedback
 2 loop.” By diverting the Facebook pages, Defendants stole from TST its avenue to communicate
 3 with its audience and thereby reduced TST’s ability to grow its membership and deterred the
 4 growth of TST’s donation base. That caused an economic harm to TST, which implicates the
 5 CPA.

6
 7 Defendants wanted to use TST as a template to form their own organization. Which, by itself,
 8 would be fine. Imitation is the sincerest form of flattery. The problem arises when Defendants
 9 abused their special access to TST’s confidential materials to shortcut the creation of a competitor
 10 organization and to deceive the public into thinking a competitor is, instead, a successor. The
 11 Court should deny Defendants’ motion to dismiss the CPA claim.

12 **F. Defamation**

13 **1. The First Amendment’s bar against judicial intervention in ecclesiastical affairs** 14 **has nothing to do with this case.**

15 In objecting to the defamation claim, Defendants principally cast themselves as the supposed
 16 heroes in a schism as part an effort to portray false statements that TST are a bunch of neo-Nazis
 17 as acts of “religious” freedom. Defendants give themselves far too much credit. This case does
 18 not involve judicial interference into ecclesiastical affairs: TST does not ask the Court to
 19 determine who the “real” Satanists are. There is enough room in the sandbox for both parties.
 20 Instead, for purposes of its defamation claim, TST simply asks the Court to find that TST and
 21 its principals are not neo-Nazis, as Defendants falsely claimed. *See* Dkt. 1-5, p. 2; Dkt. 1-6, pp.
 22 5, 10, and 14.
 23

24 Nor do Defendants find any safe harbor in *Hartwig v. Albertus Magnus Coll.*, 93 F. Supp. 2d
 25 200, 219 (D. Conn. 2000). There, a former priest had no defamation claim against the Catholic
 26

1 Church, even though an interpretation of canon law might say “once a priest, always a priest,”
 2 because the defamation claim would require the court to “examine and weigh competing views
 3 of church doctrine.” *Id.*

4 Whether TST is a bunch of neo-Nazis does not implicate the parties’ competing views of the
 5 seven fundamental tenets. TST does not invite the Court to adjudicate whether veganism is
 6 mandated by the First Tenet (“One should strive to act with compassion and empathy toward all
 7 creatures in accordance with reason.”) Instead, we ask the Court to resolve the falsity of the
 8 claim that, e.g., TST has a “weird coziness with the alt-right in general.” Dkt. 1-5 at p. 2.

10 There is a marked difference between political extremism and religious doctrine.
 11 Defendant’s efforts to twist the former into the latter notwithstanding, the Court should deny the
 12 motion to dismiss.

13
 14 **2. The defamation sufficiently pleads the statements by including the verbatim of
 the statements and pleading that they are false.**

15 In a throwaway argument, Defendants object to the specificity of the defamation claim. TST
 16 adequately pleaded that Defendants posted links and commentary with the general, and false,
 17 theme that TST leaders are incompetent fascists. Complaint at ¶¶ 35, 41; Dkt. 1-6, *passim*.

18 The defamatory statements are more than pleaded with specificity: the statements are
 19 included in full and attached to the Complaint. A Complaint is not a motion for summary
 20 judgment. It is sufficient to plead that the allegedly defamatory statements are false. If Defendant
 21 wants to pursue truth as an affirmative defense, it is welcome to file for summary judgment with
 22 proof that TST is, in fact, a bunch of neo-Nazis. Dkt. 1-6 at pp. 5, 10, and 14.

24 **III. Conclusion**

25 Defendants argue there is no CFAA claim because they had the ability to access the
 26 administrative privileges. This is undermined by Johnson’s own manifesto that indicates he

1 knew he had been ousted as a member. He acted fast enough to usurp TST's control over its own
2 Facebook pages, which is insufficient because technological gamesmanship is not sufficient to
3 avoid CFAA liability. Defendants conflate "ability" for "authorization." The Court should deny
4 the motion to dismiss the CFAA claim.

5 Defendants next argue there is no Cyberpiracy liability because they did not market the sale
6 of goods or services on the Facebook pages. This misses the mark because there is a robust
7 statutory analysis to determine whether there was a bad faith intent to profit off the mark. All of
8 the nine factors show Defendants had a bad faith intent to profit off the mark. The Court should
9 deny the motion to dismiss the Cyberpiracy claim.

10 Defendants next argue there is no tortious interference liability because TST can make a new
11 Facebook page. Defendant should make their own Facebook page. Diverting administrative
12 access to our page is an interference with the business relationship. The Court should deny the
13 motion to dismiss the tortious interference claim.

14 Defendants next argue there is no CPA liability because they did not market the sale of goods
15 or services on the Facebook pages. Commerce is implicated by Defendants' wrongful conduct
16 because TST derived an economic value from the pages—at least, until Defendants stole them.
17 The Court should deny the motion to dismiss the CPA claim.

18 Defendants last argue there is no defamation liability because, they wrongly claim, this case
19 will involve judicial consideration of a religious dispute. TST does not ask for judicial
20 construction of the seven fundamental tenets, we ask for a judicial determination that Defendants
21 lied about us being a bunch of neo-Nazis. Just because TST is a church does not give people free
22 license to make false and defamatory claims against it. The Court should find there is a difference
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1 between political extremism and religious dogma and deny the motion to dismiss the defamation
2 claim.

3 Additionally, the Court should find no merit in Defendants' argument that the statements are
4 inadequately pleaded. The statements are copied verbatim and included in the complaint. At
5 this stage, TST does need not to adduce evidence to show why the statements are false but need
6 only plead that they are false. The Court should deny the motion to dismiss the defamation claim.
7

8 Last, the Court should find no merit in the non-Johnson Defendants' efforts to abandon their
9 compatriot. The Defendants are jointly and severally liable for the fruits of their illicit conspiracy
10 under the doctrine of civil conspiracy. What Johnson did in furtherance of the conspiracy is
11 attributable to all who aided and abetted him.

12 For the reasons discussed above, TST respectfully requests that this Court deny Defendants'
13 motion to dismiss in its entirety. In the event that the Court finds any pleading deficiencies, it
14 should give TST leave to amend its Complaint to cure them.
15

16 Respectfully submitted this 22nd day of June, 2020.

17
18 LYBECK PEDREIRA & JUSTUS, PLLC

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CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of June, 2020, I electronically filed PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all parties of record.

Dated at Seattle, Washington, the 22nd day of June, 2020.

By: /s/ Benjamin Justus
Benjamin Justus